CATHOLIC EMPLOYMENT RELATIONS LIMITED

ISSUES PAPER

APPLICATION BY THE INDEPENDENT EDUCATION UNION OF AUSTRALIA

IN THE FAIR WORK COMMISSION

AM2018/9

17 May 2021

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Background

1. Catholic Employment Relations Ltd (**CER**) is the successor organisation to the Catholic Commission for Employment Relations (**CCER**). CER represents Catholic agencies throughout Australia in respect of workplace and industrial relations matters, including enterprise bargaining and award interpretation.
2. In November 2013, the Independent Education Union (**IEU**) lodged an application with the Fair Work Commission for an Equal Remuneration Order (**ERO**) for early childhood teachers employed in long day care centres and pre-schools under the *Educational Services (Teachers) Award 2020* (**EST Award**). In 2018, the IEU lodged a work value application for an increase to minimum salaries for those teachers.
3. In its decision made on 19 April 2021[1], the Full Bench of the Fair Work Commission rejected the application for an ERO but found there should be an adjustment to the minimum rates paid to teachers under the EST Award[2]. At a directions hearing on 10 May 2021, all interested parties agreed to engage in a Commission assisted conciliation conference and on the same day issued further directions, including that all parties file a document setting out the issues they wish to discuss at the conciliation conference. The issues identified by CER are listed at point 7 of this document.
4. A significant number of Diocesan school systems (also known as Catholic systemic schools) and independent Catholic schools (also known as Religious Institute (**RI**) /Public Juridic Persons (**PJP**) Schools), as well as other Catholic agencies, operate Catholic Early Leaning Centres (**CELC**). CER is an advisor to Catholic agencies with respect to workplace and industrial relations matters and has in an interest in these proceedings.
5. Catholic CELC operate on a not-for-profit basis and are registered charities with the Australian Charities and Not-for-profit Commission (either as part of a school, school system, other Catholic agency, or independently).
6. While some of Catholic organisations may already pay above award rates to teaching staff, including those that may operate under an existing enterprise agreement, a significant number may pay at or close to award rates to teaching staff, and any increase to award rates will impose a significant financial impost on those organisations.

Relevant Issues

7. CER has identified the following significant issues with respect to the IEU's work value claim for early childhood teachers, which may be of concern or interest to Catholic agencies providing early childhood learning:
    a. The detail of the new classification structure and increases to the minimum pay rates under the EST Award
    b. The operative date of any such changes to the EST Award
    c. Whether any transitional arrangement should apply

[1] *Independent Education Union of Australia – Application for equal remuneration for early childhood teachers – Application to vary Education Services (Teachers) Award 2020 on work value grounds* [2021] FWCFB 2051.
[2] Ibid at [645].

d. The impact of increases when combined with increases to award rates via the the Annual Wage Review and scheduled increases to compulsory employer superannuation contributions

e. The cost to Catholic agencies of any increase in the minimum rates of pay under the EST Award as well as any costs involved transitioning to the proposed new EST Award structure

f. The current and planned funding arrangements with the Commonwealth Government and State and Territory Governments.

Further detail on each of these issues follows.

New classification structure and increases to the minimum pay rates under the EST Award

8. The Full Bench of the Fair Work Commission rejected the IEU's work value claim for a 17.5 percent with an adjustment to internal relatives to remove compression at higher rate levels or alternatively a 25 percent increases while retaining the existing classification structure[3].

9. Instead, the Full Bench preferred an approach where wages are fixed by identifying key classifications, aligned with

> "*the appropriate classifications in the Metal Industry classification structure, and then set other rates for other classifications based on internal relativities that are assessed as appropriate*."[4]

10. According to the Full Bench, the key classification would be a Proficient Teacher, degree qualified and registered (or met the requirements for registration). Further, the Full Bench considered that the Standards Based Remuneration structure in the *NSW Teachers Award 2020* could be used in the EST Award, albeit with some modifications.

11. CER notes that a standard based remuneration structure is reflected in a number of agreements covering Catholic employers who are members of CER, including the *NSW and ACT Catholic Systemic Schools Enterprise Agreement 2020* (and its predecessor agreements since 2015).

12. This raises further issues for consideration:

    a. Whether the new classification structure preferred by the Full Bench is appropriate

    b. The modifications that will need to be made to the EST Award to reflect the new classification structure

    c. What increase to the minimum rates of pay (if any) would be appropriate

    d. In what way do the answers to a. to c. above meet the requirements of sections 134(1) and 284 or the *Fair Work Act 2009* (Cth).

The operative date of any such changes to the EST Award and the impact of increases to award rates via the Annual Wage Review and scheduled increases to compulsory employer superannuation contributions

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[3] Ibid at [646].

[4] Ibid at [653].

13. In the event that a new award structure and minimum wage rates are introduced and increased respectively, consideration should be given to the operative date of any such variations, as noted by the Full Bench[5].
14. The FWC has invited submissions on the timing of the operative date for the work value increases.
15. It is noted that there will likely be an increase to the EST Award rates of pay via the Annual Wage Review (AWR) from 1 July 2021. Such an increase will also apply to educators in CELCs who may be employed pursuant to the *Children's Services Award 2010* or the *Educational Services (Schools) General Staff Award 2020*.
16. It is also noted that compulsory employer superannuation contributions will increase from 9.5% to 10% on 1 July 2021; to 11% on 1 July 2022; and to 11.5% on 1 July 2023, and arising from the Federal Budget there will no longer be a threshold of $450 per month before CELCs will need to make superannuation contributions.
17. Following an increase on 1 July, there may be a need for a sufficient delay to the operative date to allow for CELCs to adjust to and absorb the additional further cost of any increase to teacher rates based on work value.

The need for a transitional arrangement and the length of any such arrangement

18. The Full Bench suggested that further submissions may deal with the question of whether phasing-in arrangements should apply[6]. Presumably this refers to the minimum rates of pay and the nature of any transitional arrangements, including the time over which such arrangements should apply, and the number of incremental increases over the period, will ultimately depend on the amount of any increase to the minimum rates of pay.
19. Once the minimum rates of pay are determined, the details of any transitional arrangements will need to consider the capacity of organisations to both pay for an increase to the minimum rates of pay and to increase funding levels to pay for those increases (whether by increased fees payable by parents/carers, or other means).

Consequences of an immediate EST Award wage rise on the viability of Catholic agencies to provide CELC.

20. The operating model of CELCs is sensitive to increases to costs, including increases to teachers' salaries. In particular, the requirements of the National Quality Framework are such that increases to salaries for early learning teachers are not able to be accommodated simply by increasing the number of children being educated and cared for, without employing additional staff to meet ratio and qualification requirements. Furthermore, increases in numbers of children would also be limited by space restrictions which apply to early learning centres.
21. As a result of the above, any substantial increase to early learning teachers' salaries would need to be found through an increase in funding sources.

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[5] Ibid at [665].
[6] Ibid.

22. The potential outcome of such a financial impost may include a reduction in staff and/or an increase in fees payable by parents and carers.
23. CELC's in regional and rural areas may be particularly negatively impacted as fee increases may not be viable solution in these economies.

The current and planned funding arrangements with the Commonwealth Government and State and Territory Governments.

24. The Federal Budget announced additional relief for parents who have a second child in long day care. While this announcement may spur greater demand for the services of CELC offering long day care, the extent of this increased demand is at this stage unknown.
25. Further consideration will need to be given to the nature and extent of any further funding from both levels of government.